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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,030	07/18/2003	Kimberly D. Anderson	KCC 4985 (K-C 19691)	4469
321	7590	03/02/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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10-623-030

EXAMINER
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ART UNIT	PAPER
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20060222

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Commissioner for Patents

## Office Action Summary

Application No.

10/623,030

Applicant(s)

ANDERSON ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/22/04 & 9/7/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

- I. Claims 1-18 and 20-33, drawn to an absorbent article, classified in class 604, subclass 385.01.
- II. Claim 19, drawn to a laminate, classified in class 428, subclass 98.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the laminate does not require an absorbent member. The subcombination has separate utility such as an absorbent wipe.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Richard Bridge on 17 February 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18 and 20-33. Affirmation of this election must be made by applicant in replying to this Office action.

Claim 19 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Information Disclosure Statement***

1. It is noted that an undue burden was placed on the examiner when considering the 15-page Information Disclosure Statement filed 22 January 2004 containing over 100 US and foreign patent documents.

***Claim Language Interpretation***

2. It is noted that the term 'coverage area ratio' as recited in claims 1-3 and 20 is unclear and is interpreted to include but not be limited to the percentage of the printed portion area that each respective area covers.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-13, 15-18 and 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US 5,503,076; herein 'Yeo') in view of McFarland et al. (US 6,096,412; herein 'McFarland'). Regarding claims 1-3, 15, and 17-18 Yeo discloses a multi-color printed nonwoven web laminate 10 (column 4, lines 8-11) for use in an outer cover of personal care products such as diapers and incontinence garments (column 1, lines 12-14 and column 7, lines 52-57) comprising a fibrous, absorbent facing layer/overlay 12 and substrate layer/additional other component 14, and an image including at least one ink having the color of red, blue, and green 16a, 16b, 16c and inherently black [Note that the primary colors red, blue, green when mixed form black] (column 4, lines 8-16 and figure 1), the image being printed in a non-contact manner via flexographic or ink-jet printing for good print pattern definition (column 8, lines 49-52), the laminate in one embodiment being printed at a line speed of approximately 100 feet per minute (column 10, lines 39-42). Yeo *does not expressly disclose* the colored inks coverage percentage area values. **McFarland** discloses sanitary disposable paper products (column 4, lines 46-62) having cyan, magenta, yellow and black ink (columns 9-10, Table II), with a black ink density of 0.51-1.41 (columns 23-24, Table V), a cyan

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ink density of 0.49-1.41 (columns 23-24, Table VI), a magenta ink density of 0.52-6.53 (columns 25-28, Tables VII and VII), a yellow ink density of 0.50-1.21 (columns 27-30, Table VIII). McFarland further discloses the ink deposition area, or amount of ink deposited in a given image area, is a result effective variable since it is a result of the frequency and size of halftone dots. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Yeo with the ink coverage percent area values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, when the reference discloses all the limitations of a claim except a property or function (i.e.: does not expressly disclose the coverage percent area values), and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § 2112- 2112.02.

Regarding claims 4-7 Yeo further discloses the facing layer/outer cover 12 comprises a white background (which inherently is formed via the loading of fibers with titanium dioxide which produces a white color) on which an image such as stars and hearts is printed (column 5, lines 12-16 and figures 1 and 3).

Regarding claims 8-9 Yeo further discloses the image includes a separable design element having a periphery and interior, the interior being free of black ink shading and the design element outlined in black ink (figure 3).

Regarding claim 10 Yeo further discloses the image being printed in a non-contact manner via flexographic or ink-jet printing for good print pattern definition as discussed above with respect to claim 1, the image inherently being printed with the highest threshold of blank ink in order to maximize the image quality.

Regarding claims 11-12 Yeo further discloses a focal element 16b for example (figure 1). Yeo/McFarland *do not expressly disclose* the dimensions of the design elements. The design elements are result effective variables since they are a result of the number of designs placed on the substrate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo/McFarland with design elements dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 13 Yeo discloses water-based inks that may include wax additives (column 6, lines 53-60 and column 7, lines 39-44). Yeo *does not expressly disclose* the inks are wax-based. **McFarland** discloses the ink composition may contain a wax such as polyethylene wax to improve ink rub-off resistance (column 7, lines 42-48). One would be motivated to modify the ink of Yeo with the wax additives for improved resistance to ink rub-off since both references disclose absorbent articles with multi-colored ink printing. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the ink and thus provide a wax-based ink.

Regarding claim 16 Yeo/McFarland *do not expressly disclose* a color difference value (DE\*). Color difference is a result effective variable since it is dependent on the



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change in lightness and change in chroma as disclosed by Applicant (page 21, paragraph 0049). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo/McFarland with the color difference values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, when the reference discloses all the limitations of a claim except a property or function (i.e.: does not expressly disclose the color difference values), and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02.

Regarding claims 20-22 and 30 Yeo discloses the separable design element is outlined in black as discussed above with respect to claims 1 and 10-12.

Regarding claims 23-26 see the discussion above with respect to claims 1 and 4-7.

Regarding claims 27-29 see the discussion above with respect to claims 13-15.

Regarding claims 31-32 see the discussion above with respect to claims 17-18.

Regarding claim 33 see the discussion above with respect to claims 1 and 16.

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US 5,503,076; herein 'Yeo') in view of McFarland et al. (US 6,096,412; herein 'McFarland'), and further in view of Schleinz et al. (US 5,612,118; herein 'Schleinz'). Yeo/McFarland *do not expressly disclose* the outer cover material that is the printing substrate is made

of an extensible material. **Schleinz** discloses absorbent training pant 20 with absorbent at crotch section, liquid permeable liner and elastic outer cover 42 for improved elasticity throughout the pant body, the outer cover having an outer surface 44 with a plurality of printed graphics 46 thereon (column 3, lines 52-58, column 4, lines 21-23, figure 1). One would be motivated to modify the outer cover of Yeo/McFarland with the extensible outer cover of Schleinz for improved elasticity throughout the pant body since both references disclose disposable absorbent articles having graphics printed on the outer cover. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the outer cover, thus providing an elastic and extensible outer cover.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nissing (US 2003/0044578) is cited for showing a disposable absorbent paper printed substrate such as a diaper having a substrate color density less than the background color density, yellow density of 0.5, magenta density of 0.73, cyan density of 0.75, black density of 0.64 and magenta dot coverage area of 5%. Roller (US 5,214,442) is cited for showing an adaptive dryer for a printing system that obtains values representing mass of ink and/or area coverage of ink on each page of paper. Olson et al. (US 6,297,424) is cited for showing a training pant having multi-colored multiple graphics on the outer surface of inextensible outer cover.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137.

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The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

